
(2019) 02 PAT CK 0022

In the Patna High Court

Case No : Criminal Miscellaneous No. 2731 Of 2016

Lal Babu Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 482

Citation : (2019) 02 PAT CK 0022

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Lokesh Kumar Singh, Nawal Kishore Prasad

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned A.P.P. for the State.
2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

"That this is an application for quashing the order taking cognizance dated 06.05.2014 by which the processes have been issued against the petitioner for the offence under section 7 of the Essential Commodities Act. The said order was passed by Sub-Divisional Judicial Magistrate, Gopalganj in Trial No. 4901 of 2015 arising out of Uchakagaon P.S. Case No. 18 of 2005."
3. The allegation against the petitioner is that he, being a dealer under the Public Distribution System (hereinafter referred to as 'P.D.S.') had lifted 1014 litres of Kerosene on 12.01.2005 for being distributed at his shop, but during the inspection by the Supply Inspector-cum- Block Supply Officer on the next day at about 2.35 p.m., he did not find either any drum of Kerosene Oil nor the Oil itself and further such product was also not displayed on the board which was required under the relevant statutory provisions.
4. Learned counsel for the petitioner submitted that after investigation, the police

submitted Final Form in the matter not sending the petitioner for trial, finding it to be a mistake of law. On a direct query of the Court as to whether there is anything to deny the allegation that the Kerosene Oil in huge quantity lifted a day prior was neither brought to the shop nor anything displayed to indicate the same, learned counsel could not controvert the position. Further, learned counsel submitted that the order taking cognizance dated 06.05.2014 is perfunctory as no reasons have been assigned by the Court for differing with the Final Form submitted by the police. For such proposition, learned counsel relied upon a decision of a co-ordinate Bench of this Court in

Kumar Anjani vs. State of Bihar reported as 2011(1) PLJR 393.

5. Learned A.P.P., from the case diary, submitted that many witnesses have categorically taken the stand that the Kerosene Oil was not regularly distributed by the petitioner and once in a while in about six months, some amount of Kerosene Oil was given but the quantity was very less. It was further submitted that the Court does not have to give detailed reasoning for taking cognizance as it would amount to writing judgment in the trial.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The basic allegation against the petitioner is that, being a P.D.S. dealer and having lifted 1014 litres of Kerosene, in the inspection carried out on the next day at about 2.35 P.M., neither any drum nor Kerosene Oil was found and also no endorsement for such product was written on the board. This clearly indicates that the Kerosene Oil meant to be distributed under P.D.S. never reached the shop, much less to the beneficiaries. This is coupled with the fact that many witnesses before the police, whose statement have been recorded under Section 161 of the Code, have categorically stated about such misconduct on the part of the petitioner. In such background, it is surprising that the police in the first place could submit such Final Form against the petitioner. Thus, in the opinion of this Court, the Court below having perused the case diary and arriving at the conclusion that there was material to justify taking of cognizance and issuing of process, cannot be faulted, for the reason that the same has been certified before this Court by the learned A.P.P. after going through the case diary. The same has not been controverted by learned counsel for the petitioner. Moreover, in the decision relied upon by learned counsel for the petitioner in Kumar Anjani (supra), the Court has referred to the decision of the Hon'ble Supreme Court in Minu Kumari and Anr. v. State of Bihar and Ors. reported as (2006)4 SCC 359, at paragraph no. 10, which reads as under:

"10. In this context I may also profitably refer to the decision in the case of Minu Kumari and Anr. v. State of Bihar and Ors., (2006)4 SCC 359 [: 2006(3) PLJR (SC) 236] wherein a two-Judges Bench of the Apex Court while dealing with the powers of the Magistrate has expressed the view as under:

11. When a report forwarded by the police to the Magistrate under Section 173(2)

(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or

(2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See *India Carat (P) Ltd. v. State of Karnataka* [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885])."

7. Thus, from the aforesaid, it is clear that the requirement is that the Court can independently go through the materials before it and come to a conclusion. In the present case, when sufficient materials exist for the Court to take cognizance, just because he has not individually written with regard to the statement of each witness who has spoken against the petitioner and in support of the prosecution case, would not render the order taking cognizance bad in law. Further, the Court has stated that after perusal of the case diary, he was taking cognizance. Once, this Court has found that such conclusion arrived at by the Court below is based on materials which are available in the case diary, just for the sake of mere formality, setting aside the order and remanding it to the Court below for fresh consideration would be an exercise in futility, for the reason, at the cost of repetition, it is reiterated that from the materials placed before the Court by learned A.P.P., after going through the case diary, where several

witnesses have supported the prosecution case against the petitioner in the present case, in the considered opinion of the Court, taking of cognizance and issuing of process cannot be said to be infirm in law.

8. For reasons aforesaid, the application stands dismissed.